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UNCLAS SECTION 01 OF 02 HARARE 002132

SIPDIS

NSC FOR SENIOR AFRICA DIRECTOR J. FRAZER
LONDON FOR C. GURNEY
PARIS FOR C. NEARY
NAIROBI FOR T. PFLAUMER

SENSITIVE

E.O. 12958: N/A

TAGS: [PHUM](#) [SOCI](#) [PGOV](#) [KPAO](#) [KMDR](#) [ZI](#)

SUBJECT: POLICE STYMIE COURT JUDGMENT FOR DAILY NEWS

REF: (A) HARARE 1997 (B) HARARE 1943 and previous

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PROTECT ACCORDINGLY.

11. (SBU) SUMMARY: Following a ruling by the Administrative Court in its favor October 24, The Daily News (TDN) published a truncated October 25 issue before a police raid closed the offices of parent Associated Newspapers of Zimbabwe (ANZ) later that day. The Media and Information Commission (MIC) will appeal the court's judgment, which ordered it to be recomposed and to issue a certificate of registration to ANZ by November 30. The judgment did not by its terms authorize immediate resumption of operations by ANZ and certain factions within the Government are expected to resist renewed publication even after November 30. END SUMMARY.

12. (U) Justice Michael Majuru, President of Zimbabwe's Administrative Court, on October 24 ruled in favor of the ANZ, publishers of TDN and "The Daily News on Sunday" (TDNS), after hearing ANZ's appeal of the state-appointed Media and Information Commission's (MIC) refusal to grant it an operating license. The court found for ANZ on all three grounds elaborated in its appeal: that the MIC was improperly constituted, that it acted outside its statutory authority, and that it was unduly biased. It ordered that the MIC be reconstituted in accordance with the terms of AIPPA and that, upon its reconstitution, it grant ANZ an operating license by November 30. If the MIC failed to comply by this date, ANZ would be deemed registered and could start its operations immediately.

13. (U) Immediately after the judgment was rendered, TDN printed an eight-page October 25 edition headlining "We're Back!" on the front page and reporting on various other news. The paper printed 100,000 copies that quickly sold out.

14. (SBU) Armed police raided and shut down ANZ's offices during the middle of the day on October 25. They arrested 18 journalists and other employees working on what would have been the October 26 edition of TDNS. Police in Bulawayo on October 26 also arrested Washington Sansole, a retired High Court judge and ANZ Board member. He is being held on charges of "publishing without a license." Police in Harare also arrested Tuleto Nkomo, the niece of the ANZ Chief Executive Officer Samuel Nkomo (and niece of ruling party Chairman John Nkomo), who was the only Nkomo present when they visited Nkomo's residence on October 25. The 30-year old niece had no working association with ANZ.

15. (SBU) As of the afternoon on October 27, police had released the journalists without charging them. Police charged the niece under the colonial-era Miscellaneous Offences Act and released her after payment of a ZD 10,000 (USD 2) fine. Of ANZ's nine directors, five in Harare had reported to police and were resisting efforts to have them incarcerated on unspecified charges. Sansole made an urgent application to the High Court in Bulawayo for immediate release pending arraignment. The rest of the directors reside outside the country. Armed police have sealed ANZ facilities.

16. (SBU) ANZ lawyers and officials are adamant that publishing the October 25 edition was lawful since the ruling rendered some of the media regulations under the controversial Access to Information and Protection of Privacy Act (AIPPA) invalid. Bolstering their confidence was the fact that the MIC's improper constitution meant that every registration it issued was technically void, rendering all related publications "outlaws," not just the ANZ's. In the view of government lawyers, however, the ANZ jumped the gun and was in contempt of court. To drive its case home, the MIC has said it will appeal the ruling, declaring that "the court has misdirected itself in ways that are not just fundamental but also unprecedented." Legal sources quoted

by the government-controlled press predicted a drawn out legal case that could drag on for several months while ANZ remains unproductive.

17. (SBU) COMMENT: The Administrative Court's judgment represents yet another Pyrrhic victory for the embattled ANZ. Hoping to avoid having the case bounced back to it after a near-certain future MIC determination against ANZ, the court took the rare step of not simply remanding the case for reconsideration but -- on the ground of clear bias -- instructing the Commission to issue the certificate of registration. ANZ's decision to resume publication before receiving the ordered certificate may be second-guessed but we see no indication that the government will be any more likely to permit publication even after November 30, the date by which the court commanded its registration. Appeal from the Administrative Court's decision lies with the Supreme Court, which already has found once against ANZ in the decision that served as pretext for the paper's initial shutdown last month.

18. (SBU) COMMENT (CONT'D): Behind the scenes, significant elements within ZANU-PF quietly want to see ANZ operations resume as soon as possible -- in part to counter the dominant influence of Information Minister Jonathon Moyo, to whose confidence and authority this latest swift police action bears testimony. That the unpopular Moyo continues to wield as much power as he does is symptomatic of a dysfunctional policy-making environment within the ruling party and the pernicious power of those who enjoy Mugabe's favor, as Moyo apparently does.